ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

Deployment of Wireline Services Offering	)	CC Docket No. 98-147
Advanced Telecommunications Capability	)	

COMMENTS OF
INTERMEDIA COMMUNICATIONS INC.

Intermedia Communications Inc. ("Intermedia"), by its attorneys, hereby submits its comments in response to the Commission's *Further Notice of Proposed Rulemaking* in the above-captioned proceeding.[1] In these comments, Intermedia addresses one issue: to the extent that the Commission creates a line sharing obligation on ILECs pursuant to section 251(c)(3) of the Act, it should require loop costs to be allocated between voice services and advanced services in a way that comports with the forward-looking economic cost of providing each service. Any other result would violate the technology-neutral underpinnings of the Act, and thus should be rejected by the Commission.

I. BACKGROUND

Over the course of 1998 and 1999, several incumbent local exchange carriers ("ILECs"), including Bell Atlantic, BellSouth, GTE, Pacific Bell, and SBC have filed federal tariffs to provide digital subscriber line ("DSL") services from various local exchange end

[1] *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 98-147 (rel. Mar. 31, 1999) ("*FNPRM*").

offices in their in-region territories.[2] While the specifics of each xDSL offering vary somewhat from ILEC to ILEC, each of the ILECs' tariff filings have one thing in common: loop costs are not included in the cost support work papers filed by the ILECs with their tariff offerings.

Several competitive local exchange carriers ("CLECs") filed oppositions to the ILEC DSL tariffs, arguing in part that federal tariffing of DSL services could subject competitors to a price squeeze, because the federally tariffed DSL rates may be lower in some states than the sum of the prices of unbundled network element inputs – such as local loops and collocation. In response, the Commission issued a Memorandum Opinion and Order in which it found that DSL services are properly tariffed at the federal level.[3] With respect to pricing arguments raised by competitors, the Commission noted that:

> [The] Commission is well-versed in addressing the price squeeze concerns of new entrants and has in the past successfully forestalled attempts by incumbent LECs to shift costs to monopoly services in order to justify rates that effect a price squeeze. [The Commission] has ample authority under the Act to conduct an investigation to determine whether rates for DSL service are just and reasonable.[4]

Thus, in asserting jurisdiction over DSL services, the Commission found that it would review the reasonableness of ILEC DSL rates to ensure that these federally tariffed services do not have anticompetitive effects on carriers providing DSL services over unbundled loops, which are priced by state commissions.

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2 *See* Bell Atlantic Telephone Companies Transmittal No. 1076 (filed Sept. 1, 1998), Bell Atlantic Telephone Companies Transmittal No. 1138 (filed May 19, 1999), BellSouth Transmittal No. 476 (filed Aug. 18, 1998), GTE Transmittal No. 1148 (filed May 15, 1998); Pacific Bell Transmittal No. 1986 (filed June 15, 1998), and SBC Transmittal No. 2744 (filed Jan. 13, 1999).

3 *GTE Telephone Operating Cos., GTOC Tariff No. 1, GTOC Transmittal No. 1148*, Memorandum Opinion and Order, CC Docket No. 98-79 at ¶ 32 (re. Oct. 30, 1998).

4 *Id.*

True to its word, in this *FNPRM* the Commission has sought comment on "the economic, pricing, and cost allocation issues that may arise from line sharing," including the extent to which the cost of a local loop should be allocated to the voice and data channels of the local loop.[5] This issue is critically important to all CLECs (regardless as to whether they provide voice services, data services, or both) because if ILECs can allocate the entire cost of loops to voice services only, ILEC data services effectively will be provided at a zero-cost basis.[6] Since the passage of the 1996 Act, the Commission has consistently maintained the view that cost recovery should comport with cost causation,[7] and as such, the Commission should require that loop costs be allocated fairly to the voice and data channels of the local loop.

II. ANY ILEC LINE SHARING OBLIGATION SHOULD REQUIRE LOOP COSTS TO BE ALLOCATED BETWEEN VOICE SERVICES AND ADVANCED SERVICES IN A WAY THAT COMPORTS WITH THE FORWARD-LOOKING ECONOMIC COST OF PROVIDING EACH SERVICE

As a legal matter, Intermedia supports the view that the Commission has the authority pursuant to section 251(c)(3)[8] of the Act to require ILECs to unbundle loop spectrum, such that one carrier could offer voice services while another carrier offers data services over the

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5 *FNPRM* at ¶ 106. Line sharing refers to a situation where two different service providers offer services over the same local loop, with each provider utilizing different frequencies to transport voice or data over the same local loop.

6 In addition to the amounts paid by consumers for local services, ILECs collect the flat-rated interstate subscriber line charge, the flat-rated primary interexchange carrier charge, the per-minute carrier common line charge, and a residual interconnection charge. Through the aggregate of these charges, ILECs recover all of their outside plant costs.

7 *See, e.g., Access Charge Reform*, First Report and Order, CC Docket No. 96-262 at ¶ 35 (rel. May 16, 1997) (indicating that a primary purpose of access charge reform is to "reform the current rate structure to bring it into line with cost-causation principles, phasing out significant implicit subsidies.")

8 47 USC § 251(c)(3).

same line. To the extent that the Commission utilizes its section 251(c)(3) authority to create a line sharing obligation on ILECs, it should require loop costs to be allocated between voice services and advanced services in a way that comports with the forward-looking economic cost of providing each service. Failure to allocate the cost of the local loop according to cost-based pricing principles would contradict the pricing standard set forth by Congress and would violate the technology-neutral underpinnings of the Act.

In adopting the Total Element Long Run Incremental Cost ("TELRIC") standard for pricing network elements unbundled pursuant to section 251(c)(3), the Commission noted that "the price of a network element should include the forward-looking costs that can be attributed directly to the provision of services using that element."[9] In accord with this principle, to the extent that voice and data channels are provided over a single loop, the Commission's TELRIC standard mandates that the price of each channel be attributed to the services provided over each channel. Any other outcome would result in the subsidization of one channel by the other channel, which contradicts the fundamental premise of TELRIC pricing.

The technology-neutral framework established in the Act by Congress similarly requires that cost-causation principles drive rates set for voice and data channels if the Commission requires loop spectrum unbundling. As Intermedia has noted on several occasions, the Act was designed to be technology neutral, such that market forces, rather than regulatory distinctions, would drive the advancement of the nation's communications infrastructure. In the words of the Commission, "Congress made clear that the 1996 Act is technologically neutral and

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9 *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996,* CC Docket No. 96-98, *First Report and Order*, 11 FCC Rcd 15499, ¶ 673 (1996).

is designed to ensure competition in all telecommunications markets."[10] Similarly, the Commission has noted that "[it is] mindful that, in order to promote equity and efficiency, [it] should avoid creating regulatory distinctions based purely on technology."[11]

It is vital in this proceeding that, to the extent that the spectrum unbundling is required, the Commission make extremely clear that variations from cost-causation principles simply will not be tolerated. A definitive ruling by the Commission regarding loop allocation costs for voice and advanced services would ensure that these costs are allocated consistently throughout all jurisdictions. Failure to do so would invite some state commissions and ILECs to continue to take the position that they may restrict CLEC access to UNEs depending on the status of the CLEC customer or the service used by the CLEC customer.

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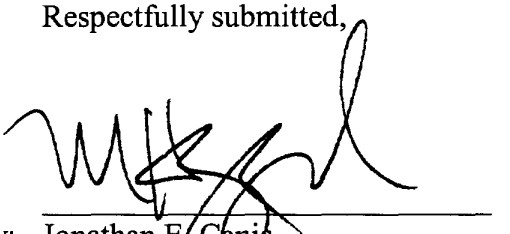
10 *Deployment of Wireline Services Offering Advanced Telecommunications Capability,* CC Docket No. 98-147, *First Report and Order and Further Notice of Proposed Rulemaking* at ¶ 11 (re. Mar. 31, 1999).

11 Federal-State Joint Board on Universal Service, *Report to Congress*, CC Docket No. 96-45, ¶ 98 (rel. Apr. 10, 1998).

III. CONCLUSION

For the foregoing reasons, Intermedia submits that to the extent that the Commission determines it should create an ILEC line sharing obligation pursuant to section 251(c)(3) of the Act, the Commission should mandate that loop costs be allocated between voice services and advanced data services in a way that comports with the forward-looking economic cost of providing each service, as contemplated by the Act.

Respectfully submitted,



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June 15, 1999